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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,792	03/07/2001	John C. Evans	GME-138/119	5511

7590 10/10/2002

Wood, Herron & Evans, L.L.P.
2700 Carew Tower
441 Vine Street
Cincinnati, OH 45202-2917

EXAMINER
WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
1761	9

DATE MAILED: 10/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

MK-9

Office Action Summary

Application No.	Applicant(s)	
09/800792	EVANS	
Examiner	Group Art Unit	
S. WEINSTEIN	1761	

—The MAILING DATE of this communication appears on th cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☑ Responsive to communication(s) filed on 4/1/02.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

☑ Claim(s) 1-36 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☑ Claim(s) 1-36 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____.

☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____.

Attachment(s)

☐ Information Disclosure Stat ment(s), PTO-1449, Paper No(s). _____

☑ Notice of Reference(s) Cited, PTO-892

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Interview Summary, PTO-413

☐ Notice of Informal Pat nt Application, PTO-152

☐ Other _____

Office Action Summary

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-7, 9-14, 15-27, 29-34, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Golub et al (RU 2111908) in view of applicants admission of the prior art, further in view of Ref U[1]. (Packaging Week 12(33), 1997), Rich et al ('278), Burstiner ('318) and Beall ('510).

In regard to claim 1, Golub et al discloses a method of marketing cotton candy ("spun sugar") wherein the cotton candy is formed by conventional techniques, positioned in a transparent container, sealed to form a package and presented to a consumer. Claim 1 recites that the container is "rigid". The word rigid is a relative term and, as construed by applicant, the word is apparently being used as more rigid than a bag and capable of preventing damage to the cotton candy relative to the damage potentially caused to cotton candy caused by packaging in a bag. Golub et al appears to discloses a container formed from two preformed hemispherical halves which encloses the "fragile" product. This container is considered to meet the term rigid (as opposed to a non-self supporting bag). The examiner will attempt to obtain a complete translation of Golub et al. Claim 1 also recites that the container body is "significantly" gas impermeable. This phrasing is also a relative one. Applicant appears to be using this term relative to flexible bags. In this regard, it is noted that even flexible, non-self supporting bags can be very

gas impermeable depending upon which polymer is selected. Saran, for example, is very gas impermeable even at very small thicknesses. It is also well known that for the same polymer, gas impermeability increases with polymer thickness since mass transfer is a function of distance and differential concentrations. Thus, a preformed self-supporting container such as the one of Golub et al would display a degree of gas impermeability. Applicants admission of the prior art is relied on as further evidence that cotton candy formed from molten sugar into a fluffy wood is, of course, conventional (eg. Page 14, para. 1). Ref. U[1] can be relied on as further evidence that the problem of moisture damaging packaged candy cotton was known and Rich et al and Burstiner can be relied on as further evidence to show the use of rigid packaging to protect fragile products. In regard to claims 2-4, the particular gas permeability, wall thickness and conventional polymer employed are seen to have been obvious maters of choice based on routine determinations once it is known that permeability is a factor in storage. The wall thickness of the container, for example, would appear to be conventional thicknesses, not out of the ordinary. In regard to claims 5-7, to modify Golub et al and substitute one conventional packaging structure for another conventional packaging structure for its art recognized and applicants intended function is seen to have been obvious in view of the art taken as a whole. The art, taken as a whole, teach snap-on covers, for example, are conventional (Beall). In regard to clam 13, the application of graphics to containers to convey information is notoriously old, dating back to the introduction of the container itself, so to modify the combination and provide graphics would have been obvious. In regard to claim 14, the length of time one displays the container is a function of how quickly the

container is purchased. The containers of the combination would be capable of two week display or longer.

Claims 8 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 5 above, and further in view of Ruff ('463).

In regard to claim 8, although the art, taken as a whole, as applied to claim 1, is considered to show lids "configured" to stackably engage a bottom of another container since this is readable on two flat surfaces), nevertheless, Ruff discloses a fitted type of stackable engagement and its use for its art recognized and applicants intended use would have been obvious.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ref. U (Packaging Week-1997).

It has also come to the examiner's attention that at least one company, Olde Tyme Foods, headquartered ~~and~~ in Massachusetts may have been marketing cotton candy in a clear plastic tub prior to applicant's filing date. The examiner will attempt to obtain evidentiary material in this regard. The product is mentioned in Product Alert, vol. 18 No. 10, 5/28/01 as "Olde Time Kotton

Kandy". If applicant has any information concerning this product he is invited to submit it to the USPTO.

The remainder of the references cited on the USPTO 892 forms are cited as art of interest.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is 703-308-0650. The examiner can generally be reached on Monday-Friday from 7:00am to 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating ~~tot he~~ to the status of this application should be directed to the receptionist whose telephone number is 703-308-0661.

SWEINSTEIN:EVH

9/19/02

STEVE WEINSTEIN
PRIMARY EXAMINER
1761
10/8/02